Public Prosecutor v The Offender

HIGH COURT (KUALA LUMPUR) — CRIMINAL REVISION NO 43-11 OF 1998
KC VOHRAH J
10 AUGUST 1998

Criminal Procedure *— Juvenile — Sentencing of — Whether s 39A(2) of the Dangerous Drugs Act 1952 overrides the provisions relating to the punishment of juvenile offenders under the Juvenile Courts Act 1947 — Whether court should impose punishment under s 39A(2) — Juvenile Courts Act 1947 ss 12(1), (3) & 15(2)*

The offender — who was 14 years 1 month when he committed the offence — was charged for possession of dangerous drugs under the Dangerous Drugs Act 1952 ('the DDA') punishable under s 39A(2) thereof. He was found guilty. The sessions court judge entered a conviction against the offender. The judge further — under the mistaken belief that s 39A(2) overrides the provisions relating to the punishment of juvenile offenders under the Juvenile Courts Act 1947 ('the JCA') — impose the minimum punishment being five years and not less than 10 strokes under s 39A(2).

Held, setting aside the conviction and substituting therefor a 'finding of guilt':

(1) Under s 12(3) of the JCA, the words 'conviction' and 'sentence' shall not be used (see p 154G–H).

(2) Sections 39A(2) and 41(1) of the DDA do not override the provisions relating to punishment under the JCA. Section 12 of the JCA gives optional power to the juvenile court either to proceed with the various types of punishment provided for under s 12(1) or impose the punishment provided for by the law under which the offender is charged (see pp 153H–I and 154A–B). Section 15(2) further enjoins that no young person shall be sentenced or ordered to be imprisoned if he can be suitably dealt with in any other place whether by probation, fine, or committal to a place of detention or approved school. In this case, the option of probation or fine was not suitable as this was a serious offence. Taking everything into consideration, the court sent him to an approved school (see p 154E–F, H).

[Bahasa Malaysia summary

Pesalah — yang berumur 14 tahun 1 bulan apabila ia melakukan kesalahan — dipertuduhkan dengan milikan dadah berbahaya di bawah Akta Dadah Berbahaya 1952 ('ADB') yang boleh dihukum di bawah s 39A(2). Ia didapati bersalah. Hakim mahkamah sesyen memasukkan sabitan terhadap pesalah. Hakim selanjutnya — kerana tersilap percaya s 39A(2) mengatasi peruntukan-peruntukan yang berhubung dengan hukuman pesalah juvana di bawah Akta

Mahkamah Juvana 1947 ('AMJ') — mengenakan hukuman minima iaitu lima tahun dan tidak kurang daripada 10 sebatan di bawah s 39A(2).

Diputuskan, mengetepikan sabitan dan menggantinya dengan 'keputusan bersalah':

(1) Di bawah s 12(3) AMJ, perkataan 'sabitan' dan 'hukuman' tidak digunakan (lihat ms 154G–H).

(2) Seksyen 39A(2) dan 41(1) ADB tidak mengatasi peruntukan-peruntukan berkaitan dengan hukuman di bawah AMJ. Seksyen 12 AMJ memberi kuasa opsyen kepada mahkamah juvana untuk sama ada meneruskan dengan pelbagai jenis hukuman yang diperuntukkan di bawah s 12(1) atau mengenakan hukuman yang diperuntukkan di sisi undang-undang di bawah mana pesalah dipertuduhkan (lihat ms 153H–I dan 154A–B). Seksyen 15(2) selanjutnya memperuntukkan bahawa tiada orang muda hendaklah dihukum atau diperintahkan menduduki penjara sekiranya ia boleh diuruskan dengan wajarnya di mana-mana tempat lain sama ada dengan percubaan, denda, atau komital ke tempat tahanan atau sekolah yang diluluskan. Dalam kes ini, opsyen percubaan atau denda tidak sesuai kerana ini merupakan kesalahan yang serius. Dengan mengambil kira kesemua ini, mahkamah menghantarnya ke sekolah yang diluluskan (lihat ms 154E–F, H).]

Notes

For cases on sentencing a juvenile offender, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1647–1659.

Legislation referred to

Dangerous Drugs Act 1952 ss 38B, 39A(2), 41(1), (3)
Juvenile Courts Act 1947 ss 4(4), 12(1)(h), (3), 15(2)

Stanley Augustin (Deputy Public Prosecutor) for the prosecution.
M Sathia (*M Sathia & Associates*) for the respondent.

KC Vohrah J: It is unfortunate that the sessions court judge was under the mistaken belief that s 39A(2) of the Dangerous Drugs Act 1952, the provision under which the offender was punished, overrides the provisions relating to the punishment of juvenile offenders under the Juvenile Courts Act 1947. I agree that s 41(1) of the Dangerous Drugs Act does give the impression. Under that provision, a sessions court or a first class magistrates' court has jurisdiction to try any offence under this Act, except an offence under s 38B, and shall have 'power to impose for any offence so tried the full punishment, or penalty provided for that offence ... other than, in the case of a magistrates' court, imprisonment exceeding five years'. Subsection (3) of s 41 states, inter alia, that this provision 'shall have effect notwithstanding any other written law to the contrary'.

Encik Stanley Augustin, DPP, concedes and it is clear that these two provisions do not override the provisions relating to punishment under the Juvenile Courts Act 1947. Under s 4(4), a juvenile court shall have jurisdiction to try all offences involving juveniles except offences punishable by death and s 12 gives optional power to the juvenile court where an offence has been proved against a juvenile either to proceed with the various types of punishment provided for under s 12(1) or impose the punishment provided for by the law under which the offender is charged.

The language in s 12(1)(h) leaves no doubt that the punishment provided for in the law that the offender is charged under can be resorted to.

Coming back to our case, the sessions judge felt he had to impose the punishment provided for under s 39A(2), the minimum punishment being 5 years and not less than 10 strokes. He imposed the minimum. But it is clear that his hands were not tied as I had explained earlier. He could have acted on the advice of the two advisers (appointed under the Juvenile Courts Act) to the effect that the boy be committed to a 'sekolah akhlak' in view of the seriousness of the offence. The reason given by the advisers for this piece of advice was that 'he could start a new life and stay away from the public'. The boy had 50 packets of the adulterated drugs in his possession which came to 1.8g of heroin and 4.8g of monoacetylmorphines.

The seriousness of the offence is clear. But s 15(2) of the Juvenile Courts Act enjoins that no young person (a person who has attained the age of 14 years and is under the age of 18) 'shall be sentenced or ordered to be imprisoned if he can be suitably dealt with in any other place whether by probation, fine, or committal to a place of detention, approved school, or Henry Gurney School ...'. The DPP reiterates the seriousness of the offence but concedes s 15(2) should have been taken into account.

The option of probation or fine is not suitable as this is a serious offence. The boy was 14 years 1 month when he committed the offence and the probation report was not adverse to him. In fact it points out that an accident which gave him a serious head injury and which had to be operated upon twice affected his behaviour subsequently.

One other matter. The sessions judge had entered a 'conviction' against the offender and 'sentenced' him under s 39B(2). Under s 12(3) of the Juvenile Courts Act the words 'conviction' and 'sentence' shall not be used.

Taking everything into consideration, acting in revision, I set aside the conviction and substitute therefor a 'finding of guilt' on the offence and send him to an approved school as from today.

Order accordingly.

Reported by Loo Lai Mee